

No. 14/13/87-6Lab./197.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court Rohtak in respect of the dispute between the workman and the Secretary, H.S.E.B. Panchkula, *versus* Shri Giana Ram.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL  
CUM-LABOUR COURT, ROHTAK.

Reference No. 274 of 1992.

*Between*

SHRI GIANA RAM S/O SHRI JHANDU RAM, VILLAGE UPLANA, DISTRICT KARNAL .. Workman

*and*

(1) SECRETARY, H.S.E.B., PANCHKULA, (2) EXECUTIVE ENGINEER (SYSTEM IMPROVEMENT  
CONSTRUCTION DIVISION H.S.E.B., KARNAL. .. Management

*Present :*

Shri M.C. Bhardwaj, A.R. for the workman.

Shri S.S. Sirohi, L.O. for the management.

#### AWARD

In exercise of powers conferred by Sub-Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication,—*vide* Labour Department Notification No. 3/25/90-3Lab., dated 29th October, 1991 :—

Whether the services of Shri Giana Ram have been terminated or he has lost his lien by remaining absent from duty? To what relief he is entitled after decision on this point?

2. Both the workman and the management were summoned. The workman appeared and filed the claim statement that he was appointed and posted as T.Mate in Sub-Division, Assandh by respondent/management in the year, 1975. Upto 1977, the services of the workman had been satisfactory but afterwards the department not paying the articles, the management had stopped the Sub-Division Assandh and workman was appointed in Construction Division in the year, 1979 and after that he was transferred in the month of February, 1983 in Nissing Division H.S.E.B. The wife of the workman had fallen ill and the workman had been attending his wife and he had given his application for leave on 5th February, 1983. His wife remained under treatment for number of months at Rohtak and ultimately the wife of the workman was dead. When the workman reached at his duty the management did not consider his application and without complying with Section 25-F of the I.D. Act he was removed from the job. Hence this claim petition was filed for reinstatement with continuity of service and full back wages.

3. Reply to the claim statement filed by the management that the reference is bad in law; that the reference is bad on account of laches and delay the petitioner is estopped by his own conduct to file the present claim petition as the petitioner left the services of the Board with his own sweet will. The services of the petitioner were never terminated by the respondent Board; the workman had joined the services in 1975 and then again joined in 1977 is denied for want of knowledge; the petitioner had left the services of the Board according to his sweet will without intimation to his immediate officer. The services of the workman were never terminated hence claims statement is dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed:—

1. Whether the workman was terminated by the management?
2. If issue No. 1 is proved whether termination is illegal and unjust?
3. Relief?

5. My findings on the above issues with reasons thereof are as under:—  
Issue No. 1 :

6. The workman has come into witness-box as WW 1 and closed the evidence. The management has examined Shri Rameshwar Dass Gupta as MW 1 and closed the evidence.

7. Shri Rameshwar Dass Gupta MW-1 has made the statement that the construction division Karnal was closed, and the whole record transferred to sub-division No. Karnal. He also made statement that services of the applicant was never terminated but he himself did not come to attend to duty on 25th June, 1983. He also made statement that as the workman had not appeared and return to himself but even the workman had not come to join the duty. He admitted that as the workman had not appeared for a long time, therefore, he was terminated. He also made statement that the opinion of L.R. was sought and his opinion report is Ex. W-1. He also admitted that the before passing the termination no departmental enquiry was conducted and the workman was never given notice pay and retrenchment compensation etc.

8. Ex. M-1 is the photostate copy of memo from S.D.E. to Gaima Ram on the subject of absent from duty mentioning that it has been reported by your J.E. Incharge that you are absent from duty with effect from 25th June, 1983 without any period approval from the J.E. as well as undersigned. Keeping in view the above you are directed to resume your duty within 7 days after receipt of the letter. Ex. M-2 is the photostate copy of Affidavit filed by the workman that he was working as casual labourer since 30th October, 1979 and that he remained absent from duty with effect from 25th June, 1983 due to his wife illness and could not inform the officer due to mental condition during his absence period and it is also given in the affidavit that he would not claim the back wage for the period he remained absent with effect from 25th June, 1983 to upto date.

9. As the workman has admitted in the affidavit Ex. M-2 that he shall not claim the back wages. It is true that the workman himself was not going on duty, it is not proper for him to claim back wages and it is thus not advisable to Court also to give him back wages. All the question remains where he remained absent because of illness of his wife who had ultimately died. It is proved from Ex.-1 certificate issued by the S.D.O. that workman had been serving different wing of the department. The workman has stated that his wife was ill and he had taken to Rohtak and she died because of illness. He could not inform to department that he could not come. The workman have also made statement that his wife being ill and he taken leave and gone to his village. He also made statement that he received notice Ex. W-2 and gave reply. The workman has submission that he had not gone to his village after submitting his application for leave. From evidence it is proved that the workman had gone to his village because his wife had fallen ill. It is not proved that he moved an application the workman could not tell and to what had because to the application. But the management also denied if the workman had given any application. It is not proved that the workman had given any application. The workman was serving the department since 1975. He had been serving the department for the last about 8 years when he gone on leave. If the person has worked for 8 years it is to mean that what so ever he stating describing his mental condition is correct. When so ever the workman had come to back he was required to join on the duty. How so ever the learned A.R. for the workman had referred to D.K. Yadav *versus* M/s. J.M.A. Industries Ltd., cited in 1993 (3) R.S.J., 696 defining retrenchment as it is intended to cover any action of management which puts an end to the employment of an employee for any reason whatsoever. I do agree with the contention of the learned A.R. for the workman that the workman was retrenched and he had not abondoned the job. As Rameshwar Dass Gupta MW-1 admits that the services of the workman were brought to end by the order of the department. It amounts to retrenchment if worker is removed his retrenchment has to be in accordance with law as laid down in Section 25-F of the I.D. Act & that is that workman should be paid one month's notice pay has to given notice retrenchment comensation etc. which are not in this case and which needs the order of the Court. Hence I decide this issue in favour of the workman against the management.

#### Issue No. 2:

10. As issue No. 1 is proved, the termination of services of the workman is not accordance with Section 25-F of the I.D. Act hence I hold termination is illegal and decide this issue in favour of the workman and against the management.

#### Issue No. 3 (Relief):

11. In view of my findings on the above issues I accept the claim petition of the workman and I hold that the workman is entitled to be reinstated with continuity of service but with out back wages as he admitted in affidavit filed by him. The reference is answered and returned accordingly, with no orders as to costs.

P.L. KHANDUJA,

The 26th May, 1994.

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Indstt. No. 1350, dated the 27th May, 1994.

A copy is forwardd to the following :-

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Karnal.

P.L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.